



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

December 4, 1991

Mr. Phillip J. John
Attorney for the Houston Municipal Employees
Pension System Board of Trustees
Baker & Botts
910 Louisiana
Houston, Texas 77002-4995

OR91-619

Dear Mr. John:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12264.

The Houston Municipal Employee's Pension System Board of Trustees (the "board"), which you represent, has received three requests for information relating to the Houston Municipal Employee's Pension Fund's investment in certain properties. You claim that some of the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(4), 3(a)(7), and 3(a)(10) of the Open Records Act. Specifically, you claim that the following information is excepted from disclosure: (1) selected portions of the minutes of the board's meetings from January 1990 to the present, (2) the names and addresses of individual pensioners, (3) information regarding the negotiations and legal analysis of certain potential environmental issues with regard to the River Place project, and (4) projected income charts, budget estimates, marketing and sales strategies, and pricing information for lots and particular assets in the River Place project.

You claim that selected portions of the minutes of the board's meetings are excepted from required public disclosure by common-law privacy interests as incorporated into the Open Records Act by sections 3(a)(1) and 3(a)(2). Section 3B

of the Texas Open Meetings Act, article 6252-17, V.T.C.S., provides in pertinent part:

A governmental body shall prepare and retain minutes or make a tape recording of each of its open meetings. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the governmental body. The minutes or tapes prepared under this section are public records and shall be made available for public inspection and copying on request.

But see id. § 2A (provision providing for confidentiality of certified agendas of executive sessions). You have informed us that the minutes in question relate to a public meeting. Accordingly, the minutes of the board meeting must be disclosed. *See generally* Open Records Decision No. 525 (1989) at 3.

You advise us that you do not possess a list containing only pensioners' names and addresses. The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision No. 572 (1990). Similarly, a governmental body is not required to answer questions or to perform research. *See* Open Records Decision Nos. 563 (1990) at 8. Accordingly, a list containing only pensioners' names and addresses need not be generated.

Next you claim that the memorandum in question (Exhibit D) is excepted from required public disclosure by the attorney-client privilege as incorporated into the Open Records Act by section 3(a)(7). *See generally* Open Records Decision No. 574 (1990). The memorandum at issue may be withheld under that exception in its entirety.

Finally, you claim that financial information relating to certain properties is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10). Section 3(a)(4) excepts "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to prevent one competitor or bidder from gaining an unfair advantage over others. Open Records Decision No. 541 (1990). Ordinarily, section 3(a)(4) may not be claimed to protect a governmental body's "competitive advantage" because it cannot be regarded as being in

competition with private enterprise. Open Records Decision No. 463 (1987). However, where a governmental body is authorized by constitutional or statutory law to invest its securities, the governmental body may be deemed, with regard to those investments, a "competitor" in the marketplace for purposes of section 3(a)(4). Open Records Decision No. 593 (1991) (copy enclosed). Whether release of particular information would harm the legitimate marketplace interests of a governmental body deemed a "competitor" requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.*

The Houston Municipal Employee's Pension Fund System is authorized to make investments. *See* Tex. Const. art. XVI, § 67; Gov't Code ch. 855. Thus, it may be considered a "competitor" for purposes of section 3(a)(4). Having reviewed your arguments relating to the specific harm release of the requested information might bring about and having reviewed the documents themselves, we conclude that the financial information relating to certain properties (Exhibit E) may be excepted from required public disclosure under section 3(a)(4). Because we find this information confidential under section 3(a)(4), we need not address the applicability of section 3(a)(10) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-619.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/GK/lcd

Enclosures: Documents, Open Records Decision Nos. 593; 574.

Ref.: ID# 12264, 12360, 12385

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